

ASSEMBLY BILL

No. 1808

Introduced by Assembly Member Wayne

January 31, 2000

An act to amend Sections 1170.1 and 1385 of, and to repeal Section 1170.95 of, the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1808, as introduced, Wayne. Sentencing.

(1) Existing law relating to sentencing provides that, with limited exceptions, when any person is convicted of 2 or more felonies and a consecutive term of imprisonment is imposed, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, as defined, and any additional term imposed for applicable enhancements. Existing law provides that the subordinate term includes enhancements in the case of a violent felony, but not generally in other cases.

This bill would provide that the “subordinate term” includes enhancements in all cases.

(2) Existing law relating to sentencing provides that the number of enhancements that may be imposed shall not be limited for specified sex offenses.

This bill would provide that an unlimited number of enhancements may be imposed for a broader number of sex offenses.

(3) Existing law provides that a judge or magistrate may, in furtherance of justice, order an action to be dismissed. Existing law provides that this provision does not authorize a

judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under a specified provision of law.

This bill would provide that if the court has the authority under the above provision to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice. This bill would provide that this provision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed under the above provision.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170.1 of the Penal Code is
2 amended to read:
3 1170.1. (a) Except as ~~provided in subdivisions (b)~~
4 ~~and (c) otherwise provided by law~~, and subject to Section
5 654, when any person is convicted of two or more felonies,
6 whether in the same proceeding or court or in different
7 proceedings or courts, and whether by judgment
8 rendered by the same or by a different court, and a
9 consecutive term of imprisonment is imposed under
10 Sections 669 and 1170, the aggregate term of
11 imprisonment for all these convictions shall be the sum of
12 the principal term, the subordinate term, and any
13 additional term imposed for applicable enhancements for
14 prior convictions, prior prison terms, and Section 12022.1.
15 The principal term shall consist of the greatest term of
16 imprisonment imposed by the court for any of the crimes,
17 including any term imposed for applicable specific
18 enhancements. The subordinate term for each
19 consecutive offense ~~which is not a "violent felony," as~~
20 ~~defined in subdivision (c) of Section 667.5, shall consist of~~
21 ~~one-third of the middle term of imprisonment prescribed~~
22 ~~for each other felony conviction for an offense that is not~~
23 ~~a violent felony for which a consecutive term of~~
24 ~~imprisonment is imposed, and shall exclude any specific~~

1 ~~enhancements. The subordinate term for each~~
2 ~~consecutive offense which is a “violent felony,” as defined~~
3 ~~in any paragraph of subdivision (c) of Section 667.5; shall~~
4 consist of one-third of the middle term of imprisonment
5 prescribed for each other felony conviction ~~for an offense~~
6 ~~that is a violent felony~~ for which a consecutive term of
7 imprisonment is imposed, and shall include one-third of
8 the term imposed for any specific enhancements
9 applicable to those subordinate offenses.

10 (b) When a consecutive term of imprisonment is
11 imposed under Sections 669 and 1170 for two or more
12 convictions for kidnapping, as defined in Section 207,
13 involving separate victims, the aggregate term shall be
14 calculated as provided in subdivision (a), except that the
15 subordinate term for each subordinate kidnapping
16 conviction shall consist of the full middle term for each
17 kidnapping conviction for which a consecutive term of
18 imprisonment is imposed and shall include the full term
19 imposed for specific enhancements applicable to those
20 subordinate offenses.

21 (c) In the case of any person convicted of one or more
22 felonies committed while the person is confined in a state
23 prison or is subject to reimprisonment for escape from
24 custody and the law either requires the terms to be served
25 consecutively or the court imposes consecutive terms, the
26 term of imprisonment for all the convictions that the
27 person is required to serve consecutively shall commence
28 from the time the person would otherwise have been
29 released from prison. If the new offenses are consecutive
30 with each other, the principal and subordinate terms shall
31 be calculated as provided in subdivision (a). This
32 subdivision shall be applicable in cases of convictions of
33 more than one offense in different proceedings, and
34 convictions of more than one offense in the same or
35 different proceedings.

36 (d) When the court imposes a prison sentence for a
37 felony pursuant to Section 1170, the court shall also
38 impose the additional terms provided for any applicable
39 enhancements. The court shall also impose any other
40 additional term that the court determines in its discretion

1 or as required by law shall run consecutive to the term
2 imposed under Section 1170. In considering the
3 imposition of the additional term, the court shall apply
4 the sentencing rules of the Judicial Council.

5 (e) All enhancements shall be alleged in the
6 accusatory pleading and either admitted by the
7 defendant in open court or found to be true by the trier
8 of fact.

9 (f) When two or more enhancements may be imposed
10 for being armed with or using a dangerous or deadly
11 weapon or a firearm in the commission of a single offense,
12 only the greatest of those enhancements shall be imposed
13 for that offense. This subdivision shall not limit the
14 imposition of any other enhancements applicable to that
15 offense, including an enhancement for the infliction of
16 great bodily injury.

17 (g) When two or more enhancements may be imposed
18 for the infliction of great bodily injury in the commission
19 of a single offense, only the greatest of those
20 enhancements shall be imposed for that offense. This
21 subdivision shall not limit the imposition of any other
22 enhancements applicable to that offense, including an
23 enhancement for being armed with or using a dangerous
24 or deadly weapon or a firearm.

25 (h) For any violation of ~~paragraph (2), (3), or (6) of~~
26 ~~subdivision (a) of Section 261, paragraph (1) or (4) of~~
27 ~~subdivision (a) of Section 262, Section 264.1, subdivision~~
28 ~~(b) of Section 288, subdivision (a) of Section 289, or~~
29 ~~sodomy or oral copulation by force, violence, duress,~~
30 ~~menace, or fear of immediate and unlawful bodily injury~~
31 ~~on the victim or another person as provided in Section 286~~
32 ~~or 288a an offense specified in Section 667.6, the number~~
33 of enhancements that may be imposed shall not be
34 limited, regardless of whether the enhancements are
35 pursuant to this section, Section 667.6, or some other
36 ~~section~~ provision of law. Each of the enhancements shall
37 be a full and separately served ~~enhancement and shall not~~
38 ~~be merged with any term or with any other~~
39 ~~enhancement term.~~

40 SEC. 2. Section 1170.95 of the Penal Code is repealed.

~~1170.95. When a subordinate consecutive term of imprisonment is imposed pursuant to Sections 669 and 1170 that involves one or more convictions for robbery where it is charged and found that in each of those robberies that the defendant personally used a deadly or dangerous weapon in the commission of that robbery, as provided in subdivision (b) of Section 12022, and each of those robberies is not a violent felony, as defined in subdivision (c) of Section 667.5, the aggregate term shall be calculated as provided in subdivision (a) of Section 1170.1, except that the subordinate term for each subordinate robbery conviction shall consist of one-third of the middle term of imprisonment and one-third of the enhancement provided in subdivision (b) of Section 12022.~~

SEC. 3. Section 1385 of the Penal Code is amended to read:

1385. (a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.

(b) This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667.

(c) (1) *If the court has the authority pursuant to subdivision (a) to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice in compliance with subdivision (a).*

(2) *This subdivision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed pursuant to subdivision (a).*